

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221906

DATE: May 19, 1986

MATTER OF: Automated Services, Inc.

DIGEST:

1. Protest by firm not in line for the award if the protest were to be sustained is dismissed, since the protester does not have the requisite direct and substantial interest in the contract award to be considered an interested party under GAO Bid Protest Regulations.
2. Protest based on potential awardee's use of protester's employees is essentially a dispute between private parties which is not for consideration under GAO Bid Protest Regulations.
3. GAO has no authority to determine, in connection with a bid protest, what information must be disclosed by government agencies. The protester's recourse, if it believes information has been withheld improperly, is to pursue the disclosure remedies provided by the Freedom of Information Act.

Automated Services, Inc. (ASI), protests the award of a contract to Downes Group/Rail Trac Associates (Downes) under request for proposals (RFP) No. FERC-85-R-001 issued by the Federal Energy Regulatory Commission (FERC) for information management services.

We dismiss the protest.

Four proposals, including ASI's proposal, were received in response to the solicitation. ASI, the incumbent contractor, alleges that as a prerequisite to award, FERC improperly required Downes to hire certain ASI employees. ASI believes that FERC assisted Downes in meeting this

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condition by giving Downes notice of award (subject to hiring the ASI personnel) prior to notifying ASI of the intended award so that Downes could recruit the ASI personnel and obtain letters of commitment from them as required by FERC. Based on this, ASI concludes that the "integrity of the competitive procurement process was compromised" and the firm requests that the requirement be recompeted.

FERC initially argues that ASI is not an interested party to protest the award to Downes because ASI would not be line for award even if its protest is upheld. In this regard, FERC points out that ASI is the third ranked and highest priced offeror of four offerors.

Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985), a party must be "interested" in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of a party's status in relation to the procurement. See Wing Manufacturing; Simulators Limited, Inc.--Reconsideration, B-213046.3 et al., Aug. 17, 1984, 84-2 C.P.D. ¶ 187.

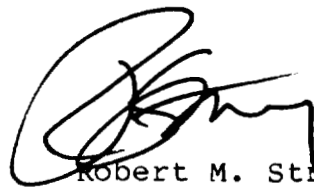
Here, ASI asserts that it is an interested party to this procurement because "there is no assurance that the second [ranked] offeror would be awarded the contract" and because FERC presumably could require the second ranked offeror to hire ASI employees. We find these assertions, based solely on supposition, too tenuous to support a finding that ASI is an interested party to challenge the award here. As ASI has not contested the acceptability of the second ranked offeror or challenged the propriety of the evaluation of its own proposal, we have no reason to believe that ASI would be in line for award if its protest were sustained. See Eastman Kodak Co.--Request for Reconsideration, B-220646.2, Mar. 24, 1986, 86-1 C.P.D. ¶ 289; National Capital Medical Foundation, Inc., B-215303.5, June 4, 1985, 85-1 C.P.D. ¶ 637.

In any event, it is not inherently improper or unusual for a prospective awardee to recruit some number of an incumbent contractor's employees in service type contracts. Gem Services, Inc., B-217038.2, Feb. 7, 1985, 85-1 C.P.D. ¶ 159. Our in camera review of Downes' proposal shows that Downes proposed using ASI personnel in virtually all "key" staff positions. While ASI alleges that FERC required

Downes to hire ASI personnel in addition to those Downes proposed as a condition to award and assisted Downes in recruiting these personnel, the agency specifically denies these allegations and Downes asserts that on its own initiative it recruited ASI personnel. At best, ASI's allegation involves a question of improper business practices by Downes, not by the government. As such, it is a dispute between private parties, which we will not consider under our Bid Protest Regulations. Gem Services, Inc., B-217038.2, supra.

ASI also complains that FERC improperly omitted from ASI's copy of the administrative report a copy of Downes' proposal and technical evaluation documents. ASI believes that these documents would have been useful in the development of its protest. GAO has no authority to determine, in connection with a bid protest, what information must be disclosed by government agencies. RCA Service Company, B-219636, Nov. 4, 1985, 85-2 C.P.D. ¶ 518. A protester's sole recourse, where information is not furnished, is to pursue the remedies provided under the Freedom of Information Act. RCA Service Company, B-219636, supra. We have, however, reviewed these documents in camera and our decision is based upon the entire record, not just those portions provided to the protester.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel